IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.1622 OF 2004

Shri Vasant Harischandra Gurav. ...Petitioner.
Vs.
Saroj Madhusudan Talshete & Ors. ...Respondents.
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Mr. S.M. Oak for the Petitioner.
Mr. M.M. Vashi for Respondent No.1.
Mr. P.M. Mokashi, AGP for Respondent Nos.4 and 5.
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CORAM : DALVEER BHANDARI, C.J. &
DR.D.Y.CHANDRACHUD, J.

September 7, 2004.

P.C.:

The Second Respondent is an educational institution which has the protection of Article 30 of the Constitution of India, having been established and being administered by persons adhering to the Zorastrian faith. The Petitioner was appointed as a peon on 2nd December 1991 and on the date of his appointment had passed the S. S. C. Examination. By these proceedings, the Petitioner has sought to challenge orders passed by the

Educational Inspector on 5th January 1998 and 28th April 2004 recognising the appointment of the First Respondent to the post of Laboratory Assistant under Section 3(2) of the the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, ("the Act") and rejecting the complaint filed by the Petitioner.

2. The First Respondent has passed the S. S. C. Examination with over 83% marks and she also possesses a diploma in Engineering and Instrumentation in the First Class. The First Respondent applied for the post of Laboratory Assistant on 4th November 1997 and was issued a letter of appointment dated 27th December 1997. The First Respondent joined the said post with effect from 5th January 1998. She is now functioning on the post for over six years.

3. Section 3(2) of the Act lays down that the provisions of the Act shall not apply to the recruitment of the Head of a minority School and any other persons not exceeding three who are

employed in such school and whose names are notified by the Management to the Director or, as the case may be, the Deputy Director for this purpose. The management by its letter dated 12th November 1997 had nominated the names of three persons respectively for the posts of Principal, Supervisor and Peon and to the post of Laboratory Assistant. The name of any person for the post of Laboratory Assistant, which was vacant, was not mentioned. Subsequently, a further communication was issued on 27th November 1997 notifying the names of four employees for the posts of Headmaster, Supervisor, Assistant Teacher and Peon. Upon the appointment of the First Respondent, the office of the Deputy Director of Education took note of the name of the First Respondent under the provisions of Section 3(2) of the Act.

4. Counsel for the Petitioner has challenged the notification of the name of the First Respondent with reference to the provisions of Section 3(2). The submission is that the notification under Section 3(2) has to be of the Head of the Minority School and any other persons not exceeding three who are employed in

such school. Hence, it was urged that the notification of the *post* of Laboratory Assistant on 12th November 1997 was not in accordance with the provisions of Section 3(2) and that in any event in the subsequent resolution dated 27th November 1997 even that post was not notified. The second limb of the submission is that the Petitioner as an in service candidate, was entitled to preference in the matter of appointment to the post of Laboratory Assistant.

5. For the purposes of this petition, and without expressing any final opinion, we would proceed on the basis that there is merit in the first submission which has been urged on behalf of the Petitioner that the requirements of Section 3(2) have not been complied with in the present case. We, however, clarify that we are not entering a final expression of opinion on this issue because even if the Petitioner is right in the submission, we are still unable to persuade ourselves in holding that the Petitioner would be entitled to relief or to unseat the First Respondent. There is no dispute about the fact that under the Maharashtra Employees of

Private Schools (Conditions of Service) Rules, 1981, the qualification prescribed for the post of Laboratory Assistant is the passing of the matriculation or Secondary School Certificate Examination with Physics and Chemistry or General Science subjects. Both the Petitioner and the First Respondent meet these qualifications. The Petitioner has relied upon clause 3 of Schedule 'F' to the Rules which lays down guidelines for the fixation of seniority of non-teaching staff. Therein it has inter alia been prescribed that if a member of the lower grade staff improves his qualifications as prescribed either for the post of Laboratory Assistant or Clerk, such employee should be given preference while filling in the said post according to his place in seniority. The expression “preference” postulates inter alia that all other things are equal. In the present case, we are of the view that the decision of the management in appointing the First Respondent does not warrant interference under Article 226 of the Constitution. The First Respondent secured as many as 83.85% marks in the Secondary School Certificate Examination and also subsequently obtained a diploma in Engineering and Instrumentation. The First

Respondent has continued to hold the post for the last six years. Having regard to the comparative merits of the petitioner and the First Respondent, it is impossible for the Court to come to the conclusion that the management has acted arbitrarily in appointing the First Respondent. The Second Respondent is an educational institution and the interest of the students has to be paramount. The appointment of a better qualified candidate cannot, in the circumstances, be faulted. We, therefore, do not find any merit in the petition. The writ petition is accordingly rejected.

CHIEF JUSTICE

DR.D.Y.CHANDRACHUD, J.